



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 20, 1995

Mr. Andrew Sansom  
Executive Director  
Texas Parks and Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744

OR95-1104

Dear Mr. Sansom:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35424.

The Texas Parks and Wildlife Department (the "department") received a request to inspect certain information. The department asserts that the requested information is excepted from required public disclosure under sections 552.101, 552.103, 552.107, 552.108, and 552.111 of the Government Code.

Section 552.303 requires the department to submit to this office the specific information requested or representative samples thereof. This office asked the department by correspondence dated September 5, 1995, to submit copies of the records at issue. We informed the department that failure to submit the requested information within seven days of the date of the notification would result in a waiver of all discretionary exceptions to disclosure. As the department has not submitted the records at issue to this office, sections 552.103, 552.107, 552.108, and 552.111 of the Government Code are waived.

We note, however, that some of the requested information may be within one of two categories of information to which, according to a recent amendment to the Parks and Wildlife Code, chapter 552 of the Government Code does not apply. *See* Act of May 22, 1995, 74th Leg., R.S., §§ 1 and 3, ch. 519, 1995 Tex. Sess. Law Serv. 3274 (Vernon) (to be codified as Parks & Wild. Code §§ 11.030 and 12.0251(a)). These categories are certain customer information and information collected by the department in response to a landowner request relating to the specific location, species identification, or quantity of

any animal or plant life that is protected by the Parks and Wildlife Code and located on private land. *Id.* As the customer information and information collected by the department described in the recent amendments to the Parks and Wildlife Code are not subject to the requirements of chapter 552 of the Government Code, the department need not address questions relating to the disclosure of these types of information to this office. However, in a situation where the applicability of sections 11.030 and 12.0251 is in dispute, failure to request an attorney general decision as provided in section 552.301 of the Government Code could create a presumption of openness.

The request here is for information that appears to include information other than customer information described in section 11.030(a) or information described in section 12.0251(a). To the extent that this request for information includes information other than customer information described in section 11.030(a) or information described in section 12.0251(a), you have not met your burden under sections 552.301 through 552.303 of the Government Code and that information is presumed to be public. Open Records Decision No. 195 (1978); *see* Open Records Decision Nos. 542 (1990), 532 (1989) (Open Records Act places on governmental body burden of establishing why and how exception applies to requested information).

In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release this information. Open Records Decision No. 195 (1978). *But see* Gov't Code § 552.352 (the distribution of confidential information is criminal offense). If you have any questions regarding this matter, please contact our office.

Yours very truly,



Kay H. Guajardo  
Assistant Attorney General  
Open Records Division

LBC/rho

Ref.: ID# 35424

Enclosures: Confidentiality list

cc: Mr. Ellis Gilleland  
P.O. Box 9001  
Austin, Texas 78766  
(w/enclosure)

Ms. Raenell Silcox  
Attorney  
Resource Protection Division  
Texas Parks and Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744  
(w/enclosure)